

**CRIMINAL JURY INSTRUCTIONS**  
**(BEFORE CLOSING ARGUMENTS)**

Members of the jury: You have heard the evidence. Now I will instruct you, and next you will hear the final arguments of counsel. The Court and the jury have separate functions: you decide the disputed facts, and the Court provides the instructions of law. It is your sworn duty to accept these instructions and to apply the law as it is given to you. You are not permitted to change the law or to apply your own concept of what you think the law should be.

**Indictment**

A criminal case begins with the filing of an Indictment. The Indictment informs Defendant that he has been charged with an offense. The fact that it was filed may not be considered for any other purpose. A plea of “not guilty” is a denial of the charge and puts in issue all the essential elements of each offense charged.

The Indictment charges that the offense was committed “on or about” a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the alleged date.

Your job is limited to deciding whether the Government has proved the crime charged against this Defendant. Whether anyone else should be prosecuted and convicted for these crimes is not a proper matter for you to consider. The possible guilt of others is no defense to a criminal charge. Do not let the possible guilt of others influence your decision in any way.

### **Burden of Proof and Reasonable Doubt**

The Indictment is not any evidence at all of guilt. It is just the formal way that the Government tells Defendant what crime he is accused of committing. It does not even raise any suspicion of guilt.

Defendant has pled not guilty to the crime charged in the Indictment. Therefore, he starts the trial with a clean slate, with no evidence at all against him, and the law presumes that he is innocent. This presumption of innocence stays with him unless the Government presents evidence, here in Court, that overcomes the presumption and convinces you beyond a reasonable doubt that he is guilty.

This means that Defendant has no obligation to present any evidence at all, or to prove to you in any way that he is innocent. It is up to the Government to prove that he is guilty, and this burden stays on the Government from start to finish. You must find Defendant not guilty unless the Government convinces you beyond a reasonable doubt that he is guilty.

The Government must prove every element of the crime charged beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives. If you are convinced the Government has proved Defendant guilty beyond a reasonable doubt, say so by returning a guilty verdict. If you are not convinced, say so by returning a not guilty verdict.

### **Number and Availability of Witnesses**

Do not make any decisions based solely on the number of witnesses who testified. What is important is how believable the witnesses were, and how much weight you think their testimony deserves. Concentrate on that, not the numbers.

### **Evidence**

Evidence is all the testimony received from the witnesses, any exhibits admitted during the trial, and any facts stipulated by counsel. You must make your decision based only on the evidence that you saw and heard here in Court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of Court influence your decision in any way.

Evidence may be direct or circumstantial, or both.

“Direct evidence” is the testimony given by a witness who has seen or heard the facts to which he or she testifies. It includes exhibits admitted into evidence during the trial.

Evidence may also be used to prove a fact by inference. This is referred to as circumstantial evidence. “Circumstantial evidence” is the proof of facts by direct evidence from which you may infer other reasonable facts or conclusions.

If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

You may not make one inference from another inference, but you may draw more than one inference from the same facts or circumstances.

Direct evidence and circumstantial evidence inherently possess the same probative value, and both must be measured by the same standard of proof -- that is, proof beyond a reasonable doubt.

### **Inconsistent Statements by a Witness**

You have heard evidence that a witness may have made statements before this trial that may be inconsistent with his or her testimony here in Court. If you find the statements are inconsistent, you may consider the earlier statement in deciding the truthfulness and accuracy of that witness' testimony in this trial. If the prior statement was not made under oath, you may not use it as evidence of the truth of the matters contained in that prior statement. However, if that statement was made under oath, you may also consider it as evidence of the truth of the matters contained in that prior sworn statement.

### **Exhibits**

Certain exhibits and the testimony related to them have been introduced. You may consider whether the exhibits are the same objects and in the same condition as originally taken by the investigators. You will determine what weight, if any, the exhibits should receive in light of all the evidence, no matter who produced the exhibit.

### **Matters Not Evidence**

Make your decision based only on the evidence, as I have defined it here, and nothing else. The evidence does not include the Indictment, opening statements, or closing arguments of counsel. The opening statements and closing arguments of counsel are designed to assist you; they are not evidence.

Statements or answers that were stricken by the Court or that you were instructed to disregard are not evidence and must be treated as though you never heard them. You must not speculate as to why the Court sustained the objection to any question or what the answer to such question might have been. You must not draw any inference or speculate on the truth of any suggestion included in a question that was not answered.

### **Credibility**

You are the sole judges of the facts, the credibility of the witnesses, and the weight of the evidence. To weigh the evidence, you must consider the credibility of the witnesses. You will apply the tests of truthfulness which you apply in your daily lives. These tests include the appearance of each witness upon the stand; his or her manner of testifying; the reasonableness of the testimony; the opportunity he or she had to see, hear and know the things concerning which he or she testified; his or her accuracy of memory; frankness or lack of it; intelligence; interest and bias, if any; together with all the facts and circumstances surrounding the testimony. Applying these tests, you will assign to the testimony of each witness such weight as you deem proper.

You are free to believe everything that a witness said, or only part of it, or none of it at all.

Some guides for evaluating the testimony include:

- Was the witness able to clearly see or hear the events?
- How good was the witness' memory?
- Was there anything that may have interfered with the ability of the witness to perceive or remember the events?

- How did the witness act while testifying?
- Did the witness have any relationship to the Government or Defendant, or anything to gain or lose from the case, that might influence the witness' testimony?
- Was the witness' testimony supported or contradicted by other evidence that you found believable?

### **Opinion Testimony**

Generally, a witness may not express an opinion. However, one who follows a special line of work may express his or her opinion because of his or her education, knowledge, and experience. You heard the testimony of [NAMES]. Such testimony is admitted for whatever assistance it may provide to help you arrive at a just verdict.

However, as with other witnesses, the duty of deciding what weight their opinions should be given, rests upon you alone. In determining its weight, you should consider their respective qualifications, skill, experience, knowledge, familiarity with the facts of this case, how they reached their conclusions, and the usual rules for testing credibility and determining the weight to be given to the testimony.

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